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JUSTIN WAGNER/MID--MISSOURI BANK



Kelly Hall
Recorder of Deeds

Title of Document: Third Amended Declaration of Restrictions, Covenants and Conditions of Tuscany Hills

Date of Document: February 1, 2016

Grantor(s): Tuscany Properties II, L.L.C.
P.O. Box 14740
Springfield, MO 65814

Grantee(s): Tuscany Hills II Property Owners Association, Inc.
P.O. Box 14740
Springfield, MO 65814

Mailing Address(s): Lee J. Viorel
Lowther Johnson, LLC
901 St. Louis, 20th Floor
Springfield, MO 65806

Legal Description: See Exhibit "A" attached hereto.

Reference Book and Page(s): Second Amended Declaration of Restrictions, Covenants and Conditions of Tuscany Hills recorded on May 17, 2012, in Book 2012, Page 6069

1/27

**THIRD AMENDED DECLARATION OF RESTRICTIONS,
COVENANTS AND CONDITIONS OF TUSCANY HILLS**

This Declaration of Restrictions, Covenants and Conditions for **TUSCANY HILLS** Subdivision (“**TUSCANY HILLS**”) made, on the date hereinafter set forth, by **Tuscany Properties II, L.L.C.**, a Missouri limited liability company and its successors and assigns (“Developer”).

WITNESSETH:

WHEREAS, Developer became the owner of record of the following described real property described on Exhibit “A” (the “Property”) attached hereto and incorporated herein by reference as if fully set forth in *haec verba*, consisting of commercial and single-family residential lots in the **TUSCANY HILLS**; and

WHEREAS, the Property was approved by Christian County, Missouri pursuant to the final plat of **TUSCANY HILLS**, and

WHEREAS, Developer desires to provide for the development of **TUSCANY HILLS** with open and common Area, common private roads, sidewalks and other facilities and to provide for the maintenance, improvement and administration of the **TUSCANY HILLS** community and the preservation of the values and amenities of **TUSCANY HILLS**, and

WHEREAS, **TUSCANY HILLS II PROPERTY OWNERS ASSOCIATION, INC.** was duly incorporated under the laws of the State of Missouri as a not-for-profit corporation for the general purposes of managing the **TUSCANY HILLS** community properties and facilities; administering and enforcing the covenants and restrictions; and collecting and disbursing the assessments as provided for in this “Declaration of Restrictions, Covenants and Conditions of Tuscany Hills” and

WHEREAS, Developer currently owns more than fifty (50%) percent of the lots in **TUSCANY HILLS** by number as of the date of execution of this Third Amended Declaration of Restrictions, Covenants and Conditions of Tuscany Hills and desires to subject the Property to these Declarations by filing them in the Office of the Recorder of Deeds for Christian County, Missouri.

NOW, THEREFORE, Developer does hereby declare that the Property shall all be subject to the restrictions, covenants and conditions, easements and charges hereinafter set forth which shall run with the land and be binding on all present and future owners, and shall inure to the benefit of each Owner of the property included in **TUSCANY HILLS**.

**ARTICLE I
DEFINITIONS**

Section 1: As used in this Declaration of Restrictions, Covenants and Conditions:

(a) "Association" shall mean and refer to **TUSCANY HILLS II PROPERTY OWNERS ASSOCIATION, INC.**, its successors and assigns.

(b) "Board" shall mean the Board of Directors of the Association.

(c) "**TUSCANY HILLS**" shall mean the Property as set forth above.

(d) "Common Area" shall mean all real property owned by the Association or designated as Common Area, Community Area or Community Properties, open or drainage area on the **TUSCANY HILLS** final plat or any amendments thereto and intended for the common use and enjoyment of the Owners. This shall not include the water and sewer system.

(e) "Corner Lot" shall mean any lot which abuts, other than at its rear line, upon more than one street.

(f) "Declaration" shall mean this Third Amended Declaration of Restrictions, Covenants and Conditions of **TUSCANY HILLS** and all other provisions set forth in this entire document, as the same may from time to time be amended or modified.

(g) "Developer" shall mean **Tuscany Properties II, L.L.C.** and its successors and assigns and any entity designated by **Tuscany Properties II, L.L.C.** as Developer.

(h) "Lot" shall mean any parcel of real property designated as Lot on any recorded Subdivision Plat within **TUSCANY HILLS** or any additions thereto, with the exception of the Common Area.

(i) "Member(s)" shall mean any Owner as all Owners shall be members in the Association.

(j) "Owner(s)" shall mean the record Owner, whether one or more persons or entities, of a fee or undivided interest in any Lot, other than Developer. The foregoing does not include any persons or entities that hold an interest in any Lot merely as security for the performance of an obligation. Except as stated otherwise in this Declaration, the term "Owner" shall not include a lessee or tenant.

(k) "Perimeter fence" shall mean a structure that circles the perimeter of the Property, excluding any commercial lots within the Property, with the design of and material used in said structure being at the sole and absolute discretion of the Developer.

(l) "Property" or "Properties" shall mean and refer to the real estate set forth above and incorporated herein by Exhibit "A" attached hereto, and referred to as **TUSCANY HILLS**, and any additional real estate acquired by Developer and developed in conjunction with and added to **TUSCANY HILLS**, upon filing an amendment to this Declaration, or the Articles of Incorporation or By-Laws of the Association, all of which are incorporated herein by reference as if fully set forth at length.

(m) "Rules" shall mean those Rules and Regulations as well as By-Laws as adopted by the Developer or the Association from time to time.

(n) "Subdivision Plat" shall mean a recorded plat covering any or all of the Property referred to in this Declaration.

(o) "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II PROPERTY RIGHTS

Section 1: Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable fees for the use of any facilities situated upon, and the improvements, repairs and maintenance of, the Common Area, including all management and administrative expenses; the right of the Association to limit the number of employees, customer, invitees and guests ("Guests") of Members; the right of the Association to limit the Common Area which may be used by Guests of Members; the right of the Association to impose conditions under which Common Area may be used by Members and/or their Guests;

(b) The right of the Association to suspend any Owner's voting rights and the right to use the Common Area and all other facilities owned or controlled by the Association for any period during which any assessment against its Lot remains unpaid, and, after notice and hearing, for a period not to exceed ninety (90) days for any infraction of this Declaration, any Supplementary Declarations thereto, By-Laws of the Association or any Rules which may be adopted by the Board of Directors of the Association;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any governmental agency, authority, or public or private utility.

(d) The right of the Association to promulgate and enforce non-discriminatory rules and regulations in connection with the Properties.

(e) The other rights of the Association set forth herein and in the By-Laws and Articles of Incorporation.

ARTICLE III PROPERTY SUBJECT TO THE TUSCANY HILLS RESTRICTIONS

Section 1: General Declaration Creating Tuscany Hills. Developer will develop the Common Area and infrastructure of TUSCANY HILLS. Developer's sale and conveyance of any Lot is subject to this Declaration, as modified and amended. Developer hereby declares that all of the real property within TUSCANY HILLS is and shall be held, conveyed, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration, as amended or modified, is in furtherance of a general plan for the Property, improvement and sale of said real property and is established for the purpose of enhancing the value, desirability, and attractiveness of the Property and every part thereof in keeping with the mission of TUSCANY HILLS to provide a premier, exclusive single-family residential development. All of this Declaration shall run with all of the real property within TUSCANY HILLS for all purposes and shall be binding upon and inure to the benefit of Developer, the Association, and all Owners and their successors in interest and assigns.

Section 2: Developer Rights in Utilities. The Developer shall retain the rights to provide water and sewer to TUSCANY HILLS and to charge the normal rates for water usage and sewer usage to be determined on an annual basis based upon consumption and usage.

ARTICLE IV THE TUSCANY HILLS PROPERTY OWNERS ASSOCIATION

Section 1: Organization.

(a) The Association. The Association is a nonprofit corporation organized and existing under the General Not-For-Profit Corporation Act of the State of Missouri, charged with the duties and invested with the powers prescribed by law and set forth in its Articles of Incorporation, By-Laws, and this Declaration. Neither the Articles nor By-Laws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

(b) Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and the By-Laws. The Developer shall control the Board of Directors until sixty percent (60%) of the Lots are sold. Once sixty percent (60%) of the Lots are sold the Developer shall turn control of the Association over to the Board of Directors.

Section 2: Powers and Duties of the Association. The Association shall have such rights, powers and duties as set forth in the Articles, By-Laws and this Declaration.

Section 3: Rules. By a majority vote of the Board of Directors, the Association may, from time to time and subject to the provisions of the Declaration, adopt, amend, and repeal rules and regulations governing the use of any Common Area by any Owner or by the family of such Owner, or by any invitee, licensee or guest of such Owner; provided, however, that such Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of such Rules as they may from time to time be adopted, amended or repealed shall be made available to each Owner, at said Owner's request. Upon promulgation, said Rules shall have the same force and effect as if they were set forth in and were part of the Declaration.

Section 4: Personal Liability and Indemnity. No member of the Board of Directors or any Committee of the Association, or any officers of the Association shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, or any other representative or employee of the Association, or the Architectural Control Committee ("ACC"), or any other Committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct. The Association shall indemnify, defend and hold harmless members of the Board of Directors or any Committee of the Association from and against all claims, causes of action, damages, losses, costs, expenses or attorney's fees incurred by or asserted against such members by reason of their good faith actions on behalf of the Association.

Section 5: Responsibility for Common Area. The Association shall have the responsibility for payment of any taxes, insurance, assessments and direct, indirect or administrative expenses related to the Common Area and responsibility for maintaining, improving, repairing, landscaping, managing, and caring for the Common Area including any storm water detention areas serving the Property, and for promoting and marketing TUSCANY HILLS (altogether the "Common Area Maintenance Expenses" or "CAM Expenses").

ARTICLE V MEMBERSHIP AND VOTING RIGHTS

Section 1: Membership. Every Owner, either of a fee or undivided interest, of a Lot, which is subject to assessment by the Association, shall be a Member of the Association. The foregoing is not intended to include and shall not include persons or entities which hold an interest merely as security for the performance of an obligation, Membership shall be appurtenant to, and may not be separated from, ownership of any Lot that is subject to assessment by the Association.

Section 2: Management. A Member shall have no rights to manage the business affairs of the Association. The management of the Association is vested entirely in the Board of Directors as set forth in the Articles of Incorporation and By-Laws.

ARTICLE VI COVENANT FOR ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments. The Developer for each Lot owned within TUSCANY HILLS hereby covenants, and each Owner of any Lot, by

acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual assessments or charges, and (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall, to the full extent permitted by law, be a charge on each Lot and Improvements thereon and shall be a continuing lien upon each Lot against which each such assessment is made until paid in full. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of each person who was an Owner of such property on the effective date of the assessment. An Owner's personal obligation for delinquent assessments shall not pass to its successors in title, but, nevertheless the lien arising by reason of such assessment shall continue to be a charge and lien upon each Lot as above provided. To the extent the Developer provides water and sewer to the lot owners said fees may also be assessment if they remain unpaid.

Section 2: Annual Assessments - Purpose. The annual assessments levied by the Association shall be used for the purpose of paying the CAM Expenses. Such purpose shall include, but shall not be limited to, and the Association's rights and powers shall include (in addition to the rights and powers set forth in this Declaration and in the Association's Articles of Incorporation and By-Laws) provision for the payment of CAM Expenses including, without limitation: the improvement, reconstruction, repair, maintenance, landscaping, care, upkeep, management and administration of the Common Area and the improvements and facilities thereon; the marketing of **TUSCANY HILLS**; the payment of any taxes, insurance, administrative costs and assessments, if any, which may be incurred or assessed and levied upon any of the Common Area; payments on any loans made to the Association; and all other costs and expenses related to the management and maintenance of the Common Area. Monthly Assessments may also include trash pickup, gate utility payments and upkeep and water and sewer usage charges. Provided, however, nothing contained herein shall limit the Association's rights and powers granted in this Article or granted elsewhere in this Declaration, the Articles of Incorporation and By-Laws of the Association. Notwithstanding anything elsewhere set forth in the Declaration the Developer shall not be assessed for any Lots.

Section 3: Annual Assessments.

(a) Rates and Amounts.

- i. Improved Lot Owners and Developer shall pay an annual assessment in an amount per Lot to be determined by the Developer.
- ii. Unimproved Lot Owners and Developer shall pay an annual assessment in an amount per Lot to be determined by the Developer.
- iii. All assessments shall be prorated for the initial Owner in the event the initial year of ownership is less than the entire assessment year. An assessment shall be prorated for an improved Lot in the event that the Lot is improved for only a part of the total assessment year. Proration shall be based upon the ratio of the number of complete calendar months owned, or the number of complete calendar months the Lot

improvements are completed, as the case may be, to the number twelve (12). Likewise, the Developer shall pay a prorated assessment for any Lot owned by the Developer which, initially becomes improved for only a portion of an assessment year. For the purposes of proration, an Owner's Lot shall be deemed to be improved as of the date an occupancy permit for a building thereon is issued by the governmental unit having jurisdiction, or twelve (12) months following the closing of the sale of the Lot to the initial Owner, whichever shall come first. A Developer-owned Lot shall be deemed improved from the date that a building on the Lot is first actually occupied.

- iv. Any and all assessments paid by the Developer for unimproved Lots, notwithstanding anything herein to the contrary, shall be deemed to be, and are loans made to the Association, bearing interest on the unpaid balance at the rate of one percent (1%) over the Wall Street Journal prime rate, from the date the assessment (loan) as made by the Developer until the (assessment) loan is repaid by the Association to the Developer.

(b) Future Assessments. The annual assessment shall be determined each calendar year by the Board of Directors of the Association or by the Developer until the Developer transfers control to the Association, without a vote of the Members, provided, however, that once sixty percent (60%) or more of the Lots are no longer owned by the Developer, the annual assessment may not be increased in any year by more than ten percent (10%) above the assessment established for the previous year without a vote of the Members.

(c) Marketing and Promotions. The annual budgeted expenses for marketing and promotions shall not exceed twenty percent (20%) of the CAM Expenses for any year.

(d) Surplus Revenues/Reserves for Liabilities. In the event the Association's revenues from assessments exceed expenses during any year, the surplus revenues shall be carried forward and utilized in the next year to decrease the assessments necessary from the Owners, provided, however, that the Association in its discretion may create and collect as part of the assessments reasonable reserves for expected expenses and contingent or unknown liabilities. Any reserve for expected expenses or contingent or unknown liabilities may be included within the budget for the Association but shall not be treated as surplus revenues until those liabilities or obligations have been extinguished, retired or terminated.

(e) Initial Improvements. The Developer's obligation for the initial construction of streets, curbs, entrance gate, perimeter fence, street lighting, water detention, sewer, water and utilities and Common Area landscaping shall remain the obligation of the Developer and shall not be the subject of any annual or special assessment. Developer shall, as its sole cost and expense, fully construct all of the initial common facilities for TUSCANY HILLS including, without limitation, all streets, curbs, entrance gate, perimeter fence, street lighting, water detention, sanitary sewers, water and all other utilities. The Developer will install a swimming pool with all equipment necessary and install all fencing required and complete the dressing rooms when thirty percent (30%) of the Lots are sold. This provision in

no way limits the Developer from owning and providing water and sewer to TUSCANY HILLS.

Section 4: Special Assessment for Capital Improvements. In addition to the annual assessments in Section 3 of this Article, the Association may levy, in any assessment year, one or more special assessments. The only purpose of any special assessment shall be for a capital improvement in the Common Area, providing in whole or in part, for the cost of any reconstruction or replacement of a capital improvement. In the Common Area, including, fixtures and personal property related thereto. Any special assessment shall require an affirmative two-thirds (2/3rds) majority vote of the Owners. Special assessments shall be levied against each Lot in equal amounts.

Section 5: Date of Commencement of Annual Assessments, Due Dates and Payment. The annual assessments for each Lot provided for herein shall commence on January 1, 2005, for the purpose of computing each Owner's obligation. Written notice of the annual budget for the Association and for the assessment due from each Owner shall be prepared by the Board of Directors and delivered to each Owner by delivery to the address requested by the Owner or, if no such address is requested, to the Owner's last known address, via regular first class mail. Assessments shall be made due and payable by the end of the first calendar month following the month in which the assessment notification is delivered. Delivery of notice shall be complete upon delivery by the Association to the United States Postal Service with sufficient postage addressed to each Owner.

Section 6: Effect of Nonpayment of Assessments: Remedies of the Association. Each Member shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and each agrees to the enforcement of the assessments in the manner herein specified, in the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit, action to foreclose or execute upon a lien or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with a breach of this Declaration, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, the assessment shall be deemed delinquent, and shall bear interest at the rate of eighteen percent (18%) per annum, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or, without any limitation by the foregoing, by either or both of the following procedures. Developer shall have the right to collect water and sewer charges for the provision of those services and Developer or its assigns shall have the right to impose a lien on a Lot for failure to pay consistent with these provisions. This right shall be exclusive to the Developer.

(a) Enforcement by Suit. The Board of Directors may cause a suit at law to be commenced and maintained in the name of the Association against any Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of delinquency, court costs, and reasonable attorneys' fees and expenses in such amount as the court may adjudge against the

delinquent Owner.

(b) Enforcement by Lien. There is, to the full extent permitted by law, hereby created a lien from April 1st each year, with power of sale, on each and every Lot within **TUSCANY HILLS** to secure payment to the Association of any and all assessments levied in that year against any and all Owners of such Lots under this Declaration, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of delinquency, and all costs of collection that may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time within thirty (30) days after the occurrence of any default in the payment of any such assessment, the Association or any authorized representative, may but shall not be required to, make a written demand for payment to the defaulting Owner on behalf of the Association. Said demand shall state the date and the amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within a single demand. If such delinquency is not paid within ten (10) days after delivery of such demand, or even without such a written demand being made, the Association may elect to file a claim or lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

- i. The name of the delinquent Owner;
- ii. The legal description or street address of the Lot against which claim of lien is made;
- iii. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorneys' fees;
- iv. That the claim of lien is made by the Association pursuant to the **TUSCANY HILLS** Declaration; and
- v. That a lien is claimed against said Lot in an amount equal to the amount stated.

Upon (1) recordation of a duly executed original or copy of such a claim or lien, and (2) mailing a copy thereof to said Owner, that lien claimed thereon shall immediately have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the liens which are hereinafter specifically described in Section 7 of this Article. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust, with a power of sale, as set forth by the laws of the State of Missouri, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of the Members. The Association

may acquire, hold, lease, mortgage, and convey any such Lot. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the Association to the extent permitted by law. Each Owner, by becoming an Owner in **TUSCANY HILLS**, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner and takes title subject to the lien of any prior unpaid assessments notwithstanding that the same may not have been recorded.

Section 7: Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 8: Borrowings. The Association shall have the power to borrow monies from the Developer or other third parties for the specific purpose of paying CAM Expenses not covered by current collections of assessments, amortized over a period of not longer than eight (8) years.

Section 9: Protests of Assessments – Effect.

(a) An Owner may protest in writing any annual or special assessment, providing such protest is delivered to an officer of the ACC within 10 days from the date of notification of the assessment. In the event a protest is filed, the due date for the assessment shall be extended for forty-five (45) days in addition to the initial due date, during which time the parties shall attempt to determine whether or not any impropriety has occurred with respect to the assessment against the particular Owner or the Owner's Lot. If no agreement is reached as to the validity of the assessment before the due date thereof, as extended by the forty-five (45) days, then the Owner, if desiring to further pursue the protest, must file a written notice of intent to pursue the protest with an officer of the ACC within 15 days following the end of the aforesaid forty-five (45) day period or else the protest will be deemed abandoned and waived.

(b) If a protest is filed to an annual assessment, only the amount of the normal assessment in excess of the previous year's annual assessment against the Owner's same Lot (or Lots) shall be subject to protest and the Owner shall be required to pay the amount of the previous year's annual assessment by the initial due date without any extension. If an Owner who has filed a notice to pursue a protest beyond the original forty-five (45) day period shall file suit to determine the validity of the protest within sixty (60) days after the forty-five (45) day period expires, then in any event the Owner shall continue, notwithstanding said protest and failure to pay the protested special assessment or the excess of an annual assessment over the previous year's annual assessment, to enjoy all the privileges of ownership within the Association, notwithstanding Section 1(b) of Article II of this Declaration. However, the lien provided for in Section 1 of Article VI of this Declaration shall, nevertheless, apply to the extent that the assessment under protest shall ultimately be determined to be due or

due in part.

ARTICLE VII ARCHITECTURAL CONTROL

Section 1: Review by Committee. No structure, building, fence, mailbox, wall, Lot drainage works, cover, enclosure, awnings, exterior area lighting, or any exterior change or alternation (including change of color) may be made to any Lot or improvement thereon, until and unless complete plans, specification and plot plans thereof showing the nature, kind, shape, height, exterior design, materials and color scheme thereof, the location of the structure on the Lot plotted horizontally and vertically, the location of driveways and fencing, shall have been submitted to and approved in writing by the ACC. A copy of such plans, specifications and plot plans as finally approved shall be kept by the ACC. All fees and expenses incurred by the ACC shall be paid by the applicant, provided that such fees and expenses shall not exceed \$500.00 for any single change or improvement.

Section 2: Duties. The ACC shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on the Lots conform and harmonize with the existing surroundings and structures in keeping with any goals of the Association including without limitation the initial goals of the Association to create and maintain a premier, exclusive and private residential community which preserves and emphasizes to the greatest extent practicable, the existing vegetation and topography of **TUSCANY HILLS**.

Section 3: Procedures.

(a) The ACC shall in its best judgment approve or disapprove all plans and requests within thirty (30) days after receipt by the Committee of all necessary information. In the event the ACC fails to take any action within thirty (30) days after a request and all necessary information has been submitted, disapproval shall be presumed and the Owner and Committee shall be deemed to have fully complied with this Article. Any plan or request, in the event of any such presumption, resubmitted by hand delivery or certified mail to the Committee shall be presumed approved if no written disapproval is delivered to the applicant within thirty (30) days after receipt of the resubmittal. The resubmittal shall clearly be marked as a resubmittal, shall refer to the applicable Article(s) and Section(s) of the Association's Articles, By-Laws and/or Declaration, and shall state that "failure of the ACC to act within thirty (30) days of receipt hereof will result in the approval of this plan and/or action requested." To be considered a resubmittal, the plan or request must be the same as the original and must be resubmitted within sixty (60) days of the ACC's receipt of the original plan or request.

(b) The ACC shall maintain written records of all plans or requests submitted to it and of all actions taken. Plans, specifications, and other records and minutes of Committee actions, if any, shall be kept by the Committee for at least one year from the date of the plans or requests.

(c) A majority vote of the ACC shall be necessary for approval of any plan or request.

Section 4: Members of Committee. Until ALL Lots in TUSCANY HILLS are sold by the Developer, the Developer shall be the sole Member of the ACC. Thereafter, the ACC shall consist of three (3) Members appointed by the Board of Directors of the Association; provided, however, that Developer shall always be one of the Members of the ACC unless and until Developer declines in writing to further serve. Otherwise, Members of the Committee are not required to be Owners.

Section 5: Liability of Committee. The ACC and its individual Members shall not be liable in damages or otherwise to any person submitting a request for approval, or to any Owner by reason of any action, failure to act, approval or disapproval, or failure to approve or disapprove any such request.

ARTICLE VIII USE AND BUILDING RESTRICTIONS

Section 1: Restrictions. The following restrictions are imposed upon each use of a Lot or portion of a Lot for the benefit of all Owners and the Developer, unless determined inapplicable by the ACC or Article IX.

Section 2: Use Restricted to Single Family Residential Dwellings. No Lot other than Lots C1, C2, C3, C4, C5, and C6 shall be used, improved or devoted to any use other than for single family residential use to the exclusion of any other uses or activities. Guests or extended family members of residential Lot Owners shall not be permitted to reside in a residence for more than 6 consecutive weeks without written permission of the Association, which in the case of extended family members shall not be unreasonably withheld. In no circumstances shall residential Lot Owners be permitted to rent or lease rooms to boarders.

Lots C1, C2, C3, C4, C5, and C6 may be used for commercial purposes consistent with the Christian County Land Use Regulations and the Division III zoning permit for the Property.

Section 3: Driveways and Parking Areas. All driveways and parking areas on each Lot shall be constructed of concrete in locations approved by the ACC. No vehicles shall be parked on gravel or grass covered areas. If a curb cut is required for the construction or improvement of any driveway onto a Lot, the Owner shall be responsible for matching the finished driveway curb radius and design of the existing curbs. There shall be a maximum of one driveway per Lot unless a second driveway is approved by the ACC in its sole discretion.

Section 4: Animals. No animals, fowl, or livestock, other than a reasonable number of generally recognized house pets, shall be maintained on any property within TUSCANY HILLS, and then only if they are kept solely as domestic pets in single family dwellings and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No doghouse, structure or pen for the care, housing or confinement of any animal shall be constructed or maintained. Upon the written request of the Owner, the Board shall

conclusively determine, in its sole and absolute discretion, whether, for the purpose of this paragraph, a particular animal is a generally recognized house pet, or a nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board of Directors shall be enforceable as other restrictions contained herein. Pets shall not be allowed loose, unrestrained or unsupervised on any part of the Properties and walking of pets shall be on a leash and allowed only on such portions of the Properties as the Board may prescribe by its Rules and Regulations.

Section 5: Antennas and Satellite Dishes. No antenna or other device for the transmission or reception of electronic signals shall be erected used or maintained outdoors on any Lot, which antenna or other device shall be visible from the street adjoining the front of said Lot without prior written approval of the ACC. If not visible from the street, TV antennas, and satellite dishes may be erected so as to be as inconspicuous as possible and no such device may extend more than three (3) feet above the ridge of the roof of the particular dwelling unit upon which the antenna is located; provided, however, the ACC shall have the authority to award variances with respect to the foregoing prohibition in its sole discretion.

Section 6: Improvements and Alterations. No building, fence, wall, canopy, enclosure or other structure shall be commenced, erected, improved, or structurally altered without the prior written approval of the ACC. The exterior surface of any structure shall not be changed in any manner without the prior written approval of the ACC.

Section 7: Temporary Occupancy. No trailer, incomplete building, tent, shack or garage and no temporary building or structure of any kind shall be used at any time as a permanent or temporary residence on any property within **TUSCANY HILLS**. The Developer shall be allowed to maintain a temporary sales office structure on the Property until all Lots in **TUSCANY HILLS** are sold by the Developer. Temporary buildings or structures used during the construction on any such property shall be subject to the Rules of the Board of Directors and shall be removed immediately after the completion of construction.

Section 8: Motor Vehicles and Trailers

(a) No mobile home, recreational vehicle or motor home, trailer of any kind, truck larger than three-quarter (3/4) ton, camper, boat, or permanent tent or similar structure shall be parked, kept, maintained or repaired upon any property or street (public or private) within **TUSCANY HILLS**, between the hours of 10:00 P.M. and 7:00 A.M., in such a manner as will be visible from neighboring property; nor shall any motor vehicle of any kind be constructed, reconstructed or repaired on public or private property within **TUSCANY HILLS**, provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs, or temporary construction shelters or storage facilities approved in writing by the ACC and used exclusively in connection with the construction of any improvement.

(b) Any motor vehicle which, in the sole discretion of the Board of Directors, is unsightly or not in keeping with motor vehicles owned or leased by **TUSCANY HILLS**

residents, shall not be parked in **TUSCANY HILLS** between the hours of 10:00 P.M. and 7:00 A.M. in such a manner as will be visible from any other Lot.

Section 9: Motor Vehicles-Excessive Noise. If the Board of Directors determines that any motor vehicle is being persistently operated so as to create loud or annoying noises within **TUSCANY HILLS**, such determination shall be conclusive and final. Such operation, upon notice by the Board of the Directors to the owner or operator thereof, shall be prohibited within **TUSCANY HILLS**.

Section 10: Landscaping and Lawns.

(a) Completion. Each Owner shall complete the landscaping required by the ACC prior to occupying their Lot unless the ACC approves in writing a delay based on weather or other conditions beyond the Owner's reasonable control. Each Lot shall have the front and side yards sodded.

(b) By Owner. Each Owner of a Lot within **TUSCANY HILLS** shall keep all planted areas containing shrubs, trees, grass and plantings, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material; provided, however, that this restriction shall not prevent an Owner from maintaining the natural vegetation perimeter, including the area located between the boundary line of its property and the street on which such Owner's property abuts, required by Section 10(d)(1) of this Article, in a natural condition utilizing native vegetation. In the event that any Owner fails to maintain its lawn, landscaping or plantings as provided herein, the Association, or its agents, may enter upon said Lot and may do so, and the Owner shall reimburse the Association for its costs upon demand. The Association may enforce collection of same in the same manner as it such costs were an assessment and shall have all powers and rights to so lien and collect as set forth in Section 6 of Article VI.

(c) By the Association. The Association, and its agents, shall have the right, at any time, to plant, replace, maintain, and cultivate shrubs, trees, grass and plantings on the Common Area and on any easements of record over an Owner's Lot. The Association or its authorized agents shall not be liable for trespass, for so doing.

(d) Trees and Perimeter Buffer yards:

(1) Each Owner of a Lot shall preserve and maintain a buffer yard with grass, trees and ornamental shrubbery around the perimeter of its Lot at least five (5) feet wide. This shall be lawn grass and properly mowed. The front and side yards shall be sod with adequate sprinklers to properly water the sod and grass, trees and ornamental shrubbery. No Owner shall build any structure or other improvement in such buffer yard without the prior written permission of the ACC. In such buffer yard, each Owner shall preserve all existing, trees (in good condition and larger than two (2) inches caliper at twelve (12) inches above grade).

- (2) No tree or trees (in good condition and larger than two (2) inches caliper at twelve (12) inches above grade), whether now or hereafter grown upon any part of the subject property, shall be cut down without prior written approval of the ACC. This restriction shall not be construed to limit in any way reasonable trimming of any trees within the Property, or the cutting of trees necessary to the location and construction of approved buildings or improvements upon a Lot. The intent of this restriction is to require each Owner of a Lot within the Property to preserve and maintain, to the greatest extent practicable and consistent with the Owner's right to enjoy its Lot, a natural and mature forested appearance of the Property.
- (3) Deciduous or coniferous trees with a minimum caliper of two (2) inches as measured twelve inches (12) above grade shall be planted by the Owners at their expense where necessary, on each Owner's Lot, ten (10) feet in from rights-of-ways in order to provide a border on each side of the streets. Spacing of newly planted trees shall be twenty-five to thirty (25-30) feet apart. Trees shall be a mix selected for fall foliage colors and spring flowering characteristics.
- (4) Each Lot Owner shall be responsible for maintaining said street-scraping trees and their replacement, if necessary, in the event of major damage or death.

Section 11: Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot within **TUSCANY HILLS**, and no odors shall be permitted to arise from or noise emanate from said Lot so as to render any such Lot or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, and speakers used for home intercom communications or exterior music systems shall be located, used or placed upon any such property. The Board of Directors in its sole discretion shall have the right to determine the existence of any such nuisance and, for the purposes of this Declaration, such determination shall be conclusive. No noxious or offensive activity shall be carried on in or on any Lot or in the improvements thereto or in any Common Area, nor shall anything be done either willfully or negligently, which may be or become an annoyance or a nuisance to the other Owners or residents.

Section 12: Repair of Buildings. No building, structure or fence upon any Lot within **TUSCANY HILLS** shall be permitted to fall into disrepair, and each such building, structure or fence shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

Section 13: Trash Containers and Collection. No garbage or trash shall be placed or kept on any property within **TUSCANY HILLS**, except in covered containers of a standard type

approved in writing by the Association. The Association shall select a company for weekly trash disposal service for **TUSCANY HILLS**. All residents of **TUSCANY HILLS** shall be required to use this company and no other regular trash disposal service shall be permitted. Any such company selected by the Association must perform such services at a rate competitive with normal rates charged for such services in southeast Springfield. In no event shall such containers be maintained so as to be visible from neighboring Property except to make the same available for collection and then, only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, and garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot and no burning in the open will be permitted.

Section 14: Clothes Drying Facilities. Outside clothes lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot within **TUSCANY HILLS** unless they are erected, placed or maintained exclusively within an area not visible from any neighboring Property or Lot.

Section 15: Encroachments. No tree, shrub, or planting of any kind on any Lot within **TUSCANY HILLS** shall be allowed to overhang or otherwise encroach upon any street, pedestrian way, or other area from ground level to a height of eight (8) feet, without the prior written approval of the ACC.

Section 16: Machinery and Equipment. No machinery or equipment of any kind shall be placed, parked, operated or maintained upon or adjacent to any Lot within **TUSCANY HILLS**, except that:

(a) An Owner (or Guest, invitee, licensee, family member, agent or employee thereof) may use such machinery or equipment as is usual and customary in connection with the use and maintenance of that Owner's Lot, or the improvements thereon.

(b) A builder or contractor constructing improvements for an Owner may use such machinery or equipment as is usual and customary in connection with the construction of improvements on an Owner's Lot, provided that such machinery and equipment is actively being used by the builder or contractor and is stored or placed in an area approved in writing by the ACC and that no trucks of any kind or nature shall be kept, parked or placed upon any Lot or street (public or private) within **TUSCANY HILLS** between the hours of 10:00 P.M. and 7:00 A.M., unless permission to the contrary is temporarily granted by the ACC.

(c) The Developer or the Association may park, place, operate or maintain such machinery and equipment as may be required for the operation and maintenance of the Common Area.

(d) All exterior mechanical equipment shall be either incorporated into the overall form of the building or structure or be permanently enclosed by a material, other than plant material, approved by the ACC.

(e) All solar equipment shall also be incorporated into the structure and be architecturally compatible with the improvements on any Lot and shall be prohibited unless approved by the ACC.

Section 17: Restriction on Further Subdivision and Leasing. No Lot within **TUSCANY HILLS** shall be further subdivided by any Owner, and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by an Owner, without the prior written approval of the Developer and the Association. No Owner of a Lot shall lease or rent the Lot to any other person or entity.

Section 18: Signs. No sign of any kind shall be displayed or located or attached to the exterior of any building or freestanding on any Lot or in any Common Area without prior approval of the ACC, which shall give or withhold approval based upon its findings as to whether the proposed signage is in keeping with the character and intent of **TUSCANY HILLS** as expressed in this Declaration and elsewhere. The decision of the ACC shall be final subject only to judicial finding of patent discrimination.

Section 19: Dwelling Size. Each residential dwelling in **TUSCANY HILLS** shall contain, at a minimum: (1) if only a one level residence, at least 2,200 square feet of living space on the ground floor; (2) if a residence with a basement, at least 1,900 square feet of living space on the main floor and 900 square feet of living space in the basement; (3) if a two-story residence, a second floor with a minimum of 900 square feet of living space and a minimum of 1,900 square feet of living space on the main floor. Garages: attached garages shall have space for at least three (3) vehicles and three (3) garage doors. The ACC shall exercise its best judgment to see that all structures, as to size, conform to and harmonize with the existing surroundings and structures.

Section 20: Building Location.

(a) No building shall be located nearer to any Lot line than the minimum set back, if any, shown on the recorded plat of **TUSCANY HILLS**.

(b) The building location (horizontal and vertical) must be approved in writing by the ACC unless constructed by or under the control of the Developer.

Section 21: Fences. Permission for a fence, construction, aesthetics and all other aspects of the fence shall need to have the ACC approval in advance of any construction.

(a) All fences must be constructed of metal with masonry columns. .

(b) The maximum height of any fence shall be forty-eight (48) inches from the ground.

(c) Columns must be constructed of brick, stone or stucco or a combination thereof. Columns must be spaced no less than eight (8) feet apart and with a maximum spacing of sixteen (16) feet.

(d) No fence shall extend frontward past the back corners of the residence.

(e) There must be a five (5) foot minimum buffer zone between the sides and back of the fence in regards to the boundaries of the Lot. An exception will be made when the back of the Lot is not adjacent to another Lot in **TUSCANY HILLS**.

(f) Dog runs are not permitted.

Section 22: Easements. Easements are reserved as shown upon the recorded plat or plats of **TUSCANY HILLS**.

Section 23: Soil Removal. Soil may not be removed from the subdivision, except in connection with landscaping of a Lot, without the consent of the Developer.

Section 24: Garage Doors. The doors of all garages, if any, shall be kept closed at all times, except when necessary for ingress and egress. The doors of all garages shall be installed with electric or battery powered opening and closing devices.

Section 25: Timing of Construction of Improvements. Upon the conveyance by the Developer of any Lot in **TUSCANY HILLS**, or additions thereto, the purchaser shall, within twelve (12) months from the date of purchase, commence construction of improvements. Completion of said improvements shall be within twenty-four (24) months after commencement thereof. For failure of purchaser or purchasers to comply with said requirements, or any of them, the Developer shall have the option to repurchase said Lot or Lots for a sum equal to the original purchase price at the time of sale by the Developer, which option must be exercised in writing within twenty-seven (27) months from the date of purchase at the latest at which time the option shall expire. Notwithstanding the foregoing, the ACC may upon application by a prospective owner who has entered into a contract for the purchase of a Lot in **TUSCANY HILLS** grant special permission for construction schedules that are reasonable considering the needs and purposes of the proposed owner; providing that in no event shall construction be authorized, which has a completion schedule more than 3 years from the date of the acquisition of the Lot. Construction delay by reason of matters reasonably beyond control of the Owner or the Owner's contractor shall not violate an approved construction schedule, so long as a written request for delay and the reason therefore is submitted to an officer of the ACC within a reasonable time after the cause of delay occurs.

Section 26: Basketball Goals. No permanent basketball goals shall be installed or placed on any Lot that is Visible from any neighboring Property. Portable basketball units can be used on drive ways but not in the street and must be secured out of sight when not in use. The Developer shall erect a permanent basketball goal (adjustable) on a concrete slab in the Common Area along with swings, slides and other playground equipment for children.

Section 27: Outside Lighting. Spotlights, floodlights, or similar type high intensity lighting shall be designed, located and constructed so as to eliminate or significantly reduce glare on adjoining Lots, and the ACC may direct that they be redesigned or eliminated if they determine that

it is advisable for any reason. Other types of low intensity lighting that do not disturb the Owners or other occupants of the other Lots may be allowed. Any exterior lighting allowed shall be of a "sharp cut-off" design, minimizing light spill onto adjacent Lots. Such fixtures, used for illumination of walks, driveways, address signage, etc., shall be compatible with the building.

Section 28: Roofs. All roofs shall have an exterior surface that shall be architectural composition shingles, tile, slate or other materials approved in writing by the ACC, in its sole discretion.

Section 29: Flammable Substances. No Owner or occupant or any of its agents, servants, employees, licensees, lessee's visitors, or others on the Property shall, at any time, bring into or keep in its Lot any flammable, combustible or explosive fluid, material, chemical or substance, without the written approval of the ACC, except substances used in the ordinary course of cleaning, cooking, construction or repairs. Vehicular fuels located in vehicles shall not constitute a flammable substance for purposes of this prohibition.

Section 31: Equipment Installation. The installation and use of any equipment in a Lot shall conform to the generally accepted or recommended technical specifications for the equipment involved and shall not interfere with the use and enjoyment or create any danger to any other Lot.

Section 32: Restriction on Number of Buildings per Lot. No more than one (1) residence building may be built on any one (1) Lot without the written permission of the ACC. A Lot Owner may erect a detached garage and up to two (2) outbuildings for storage or hobby activities on its Lot, provided the location and design of such buildings are approved in writing by the ACC.

Section 33: Restrictions as to Building Materials Covering Outside Walls. No building or structure of any kind of what is commonly known as "boxed" or "sheet metal" construction shall be built on any Lot unless such building or structure shall be covered on all its outside walls with stucco, brick or stone, or other materials agreed to in writing by the ACC.

Section 34: Noise Producing Activities. Owners shall not engage in activities that produce unreasonable noise beyond the boundary of a Lot, such as lawn mowing, leaf blowing, hammering or operating electrical or air-driven tools, between the hours of 9:00 P.M. and 7:00 A.M., except in cases of emergency repairs or maintenance. Notwithstanding the foregoing, Owners may engage in outdoor entertainment activities that produce noise beyond the Lot line in a reasonable manner that does not unduly inconvenience other Lot Owners.

Section 35: Restriction against All Manufacturing Enterprises. No manufacturing shall be maintained on, in front of, or in connection with any Lot.

Section 36: Restriction against Fairs, Exhibitions and the Like. There shall not be conducted or allowed on any Lot, any fair, exhibition or festival or other activity that attracts or is intended to attract, divert or collect a large number of persons in the Common Area without the written approval in writing of the Association by a majority of votes.

Section 37: Restriction against Business Operations. No Owner of any Lot shall carry on any business enterprise or occupation in its residence or on any Lot that involves the regular or frequent entry of any customer onto the Lot. Any business or occupation conducted from a residence on a Lot shall comply with all requirements of the Christian County Building Regulations and Zoning Code for the conduct of such activities.

Section 38: Restriction against Excavation and Grading. No excavation for stone, gravel or earth shall be made on any Lot except for walls, basements, or cellars of structures, without prior written approval of the ACC.

Section 39: Restriction against Raising or Lowering Height of Grade. No Owner or occupant shall, at any time, raise or lower the grade of any Lot above or below the grade at the time of transfer of ownership of the Lot to the Owner, except for areas to be cut or filled for the construction of improvements approved by the ACC.

Section 40: Mailboxes. The design and construction of mailboxes shall be specified in writing by the ACC so as to be uniform in appearance and quality, and all Lot Owners shall use the approved design. In general, all mailboxes shall be located at the end of an Owner's driveway.

Section 41: Entrance Gate. The Developer shall construct an entrance gate with a coded keypad or other device to control access into the Property. Each Owner covenants and agrees to use reasonable care to prevent unauthorized dissemination of the code numbers, keys or other methods of controlling the entrance gate so as to prevent unauthorized persons from entering onto the Property. This restriction shall not preclude Owners from providing access to contractors, subcontractors, repairmen, service technicians and emergency vehicles or personnel to the Property.

Section 42: Window Coverings. No sheets, foil, or any other temporary type of window covering shall be visible from the outside. Only blinds or draperies are acceptable and this may be enforced by the ACC.

Section 43: Repairs/Reconstruction. In the event of fire, windstorm, or other damage, a structure shall be repaired, remodeled, rebuilt or completely removed within a reasonable time.

Section 44: Notice of Violation/Remedies. In the event that an Owner (or Guest, invitee, licensee, family member, builder, contractor, sub-contractor, agent or employee thereof), shall violate, or permit to be violated, any of the provisions set forth in this Article, the Board of Directors shall cause to be delivered to said Owner a written notice of violation ("Notice of Violation"). Said Notice of Violation shall set forth the nature of the alleged violation and shall request that the violation be voluntarily terminated or remedied within a reasonable time from the mailing date of the Notice of Violation. If after a reasonable time has elapsed from the date of the delivery of the Notice of Violation and the violation has not been voluntarily terminated by the Owner, the Association shall have the authority to pursue and affect any and all procedures that may be calculated as reasonably necessary to remove and/or terminate the cause of said violation. This authority shall include, but shall not be limited to, the power to employ laborers to enter upon the

Lot of said Owner for the purpose of removing and/or terminating the cause of said violation. If, by virtue of the exercise of the authority granted herein, the Board of Directors shall incur expenses in connection with the process of removing and/or terminating said violation, the Association may enforce collection of same in the same manner as if such costs were an assessment and shall have all powers and rights to so collect as set forth in Article VI, Section 6, herein.

For purposes of administering this Section, the determination of whether a violation has been, or is being, committed and the determination of what time period constitutes a "reasonable time" allowable for voluntary termination of the same, shall be made by the Association after taking into consideration the facts and circumstances surrounding the particular violation, condition or occurrence.

ARTICLE IX CARE OF COMMON AREA

Section 1: Maintenance by Association. The Board of Directors of the Association may, at any time, as to any Common Area owned, leased or otherwise controlled by it, take the following actions without any approval of the Owners being required:

- (a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area.
- (b) Reconstruct, repair, replace or refinish any improvement or surface upon any portion of such area used as a road, street, walk, and driveway or parking area.
- (c) Replace injured or diseased trees or other vegetation in any such area, and plant trees, shrubs, annuals and perennials, and ground cover to the extent that the Board of Directors deems it necessary or desirable for the conservation of water and soil and for aesthetic purposes.
- (d) Place and maintain upon any such area such signs as the Board of Directors may deem appropriate for the proper identification, use and regulation thereof.
- (e) Do all such other and further acts which the Board of Directors deems necessary to preserve and protect the property and the privacy and beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board of Directors and its designees shall be the sole judges as to the appropriate maintenance of all grounds within the Common Area.

Section 2: Damage or Destruction of Common Area by Owners. In the event any Common Area is willfully or maliciously damaged or destroyed by an Owner or any of its Guests, invitees, licensees, contractors, agents or members of his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association, at its option, shall so repair said damaged area. The cost for such repairs shall be paid by said Owner, upon

demand, to the Association and the Association may enforce collection of same in the same manner as if such costs were an assessment and shall have all powers and rights to so collect as set forth in Article VI, Section 6, herein.

ARTICLE X GENERAL PROVISIONS

Section 1: Enforcement/Waiver. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, as modified and amended. Failure by the Association and/or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2: Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3: Amendment.

(a) The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless otherwise amended as herein provided.

(b) This Declaration may be amended in whole or in part at any time without Membership or Board of Director approval within five (5) years from the date of recordation of same by an instrument in writing executed by Developer, its successors or assigns, but only if Developer still owns at least fifty percent (50%) of the Lots by number.

(c) This Declaration may be amended after the above-mentioned five (5) year period or after Developer owns less than fifty percent (50%) of the Lots, whichever be sooner, by an instrument in writing executed by the Association, with the approval of a two-thirds (2/3rds) majority vote of the members of the Association.

(d) Any provisions of this Declaration that would provide for the elimination of the Homeowners Association's duties to maintain the Common Area or any amendment of this Declaration that would alter any obligation by the Developer, Association or any owner to maintain the Common Area, including, but not limited to, the storm water detention facilities, drainage or detention areas, detention ponds, sediment basins or floodplain in any areas designated as "common area" on the plat of Tuscany Hills Phase I & Tuscany Hills Phase II subdivision shall require written approval of Christian County, Missouri, or such other governmental subdivision as shall have jurisdiction at such time, before it shall become effective. Further, no amendment of this Declaration shall be made or Articles of Dissolution filed with the Missouri

Secretary of State to dissolve the Association without the prior written consent of Christian County or such other governmental subdivision as may have jurisdiction at such time. Further, no amendment of the Covenants and Restrictions of this Declaration shall be effective until it is recorded in the Recorder of Deeds of Christian County, Missouri.

(e) A resolution adopting a proposed amendment may be proposed by an Owner at a meeting of Members of the Association. Notice of subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. The resolution shall be adopted by the vote, in person or by proxy, or written consent of at least two-thirds (2/3rds) of the votes of the Members of the Association. A copy of each amendment shall be certified by at least two (2) officers of the Association and the amendment is effective when the Certificate of Amendment is recorded. Notwithstanding the foregoing to the contrary: (i) no amendment shall discriminate against any Owner or against any Lot or class or group of Owners or Lots unless the Owners of the applicable Lots and the holders of first mortgages on such Lots shall consent thereto in writing; and (ii) any of the following amendments (or termination), to be effective, notwithstanding Article X, Section 3(b) herein, must be approved in writing by all of the Owners and all of the record holders of first Mortgages encumbering all or any portion of the Properties at the time of such amendment:

- (1) Any amendment that would necessitate an encumbrancer, after it has acquired a Lot through foreclosure, to pay more than its proportionate share of any unpaid Assessment or Assessments;
- (2) Any amendment that would change the share of Assessments, or any portion thereof, chargeable against each Owner;
- (3) Any amendment that would or could result in an encumbrance being cancelled by forfeiture; or
- (4) Any amendment to or termination of any of the easements granted or reserved hereby or any proposed termination of this Declaration.

A certificate, signed and sworn to by two (2) officers of the Association that the Owners holding the required voting power of the Association have either voted for or consented in writing to any amendment adopted as above provided and, in regard to any amendment that requires the written consent of any of the record holders of First Mortgages, that such mortgage holders have consented in writing to such amendment ("Certificate" or "Certificate of Amendment"), when recorded, shall be deemed conclusive evidence of such fact if not contested within two (2) years of the filing.

(f) Notwithstanding anything herein to the contrary, amendments to Article VI Sections 2, 3, 4, and 8 of this Declaration and the ratio of Developer's votes for each

Lot Developer owns, shall not be made without a two-thirds (2/3rds) majority vote of the members of the Association.

(g) Notwithstanding any of the other provisions of this Section to the contrary, no amendment to the covenants and restrictions of this Declaration shall be effective if the amendment would (1) increase the percentage share of assessments, or any portion thereof chargeable against each Owner; or (2) make unlawful any existing lawful uses or activities on any Lot in **TUSCANY HILLS** unless, in addition to any other requirements for said amendment to be effective, all Owners affected by any such changes shall consent to the change, in writing and recorded as a part of said amendment.

Section 4: Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a Nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Developer, the Association, or any Owner or Owners of Lots within **TUSCANY HILLS**. However, any other provision to the contrary notwithstanding, only the Developer, the Association, the Board of Directors, or the duly authorized agents of any of them, may enforce by self-help any of the provisions of these Restrictions.

Section 5: Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within **TUSCANY HILLS** is hereby declared to be a violation of these Restrictions and subject to any or all of the enforcement procedures set forth in these Restrictions.

Section 6: Remedies Cumulative. Each remedy provided by these Restrictions is cumulative and not exclusive.

Section 7: Delivery of Notices and Documents. Any written notice or other documents relating to or required by these Restrictions may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered the day after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows:

(a) If to the Association or the ACC, to **Tuscany Properties II, LLC** in care of Eric McClure, P.O. Box 1470, Springfield, MO 65814.

(b) If to an Owner or Builder, to the address of any Lot within **TUSCANY HILLS**, owned, in whole or in part, by him or to any other address last furnished by an Owner to the Association.

(c) If to Developer, to **Tuscany Properties II, LLC** in care of Eric McClure, P.O. Box 1470, Springfield, MO 65814.

Provided; however, that any such address may be changed at any time by the party concerned by furnishing a written notice of change of address to the Association. Each

Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 8: The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the Property, each person or entity, for himself herself or itself, their heirs, personal representatives, successors, transferees and assigns, binds himself; herself and their heirs, personal representatives, successors and assigns to the covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general and wholly appropriate scheme for the improvement and development of the real property covered thereby.

IN WITNESS WHEREOF, the undersigned Tuscany Properties II, L.L.C. has caused this instrument to be executed on this 1 day of February, 2016.

DEVELOPER:
Tuscany Properties, II, L.L.C.

By: *Eric McClure*
Eric McClure, Manager

STATE OF MISSOURI)
) SS.
COUNTY OF GREENE)

On this 1 day of February, 2016, before me personally appeared Eric McClure, to me personally known who being duly sworn did say that he is the Manager of Tuscany Properties II, L.L.C., and that the said instrument was signed on behalf of the said Company by authority of the Members and the said Eric McClure acknowledged said instrument to be the free act and deed of said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal, at Springfield, Missouri, the day and year first above written.

Debra Diane Dunlap
Notary Public

My Commission Expires:



DEBRA DIANE DUNLAP
My Commission Expires
November 18, 2018
Greene County
Commission #14450872

EXHIBIT "A"

LEGAL DESCRIPTION

EAST PROPERTY DESCRIPTION: *Phase 2*
A PART OF SECTION 35, TOWNSHIP 28 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI,
MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHEAST CORNER OF THE SW ¼ OF THE NE ¼ OF SAID SECTION 35,
THENCE S 00 03'47"E 1290.24 FEET TO THE SOUTH LINE OF SAID SW ¼ OF THE NE ¼; THENCE N 89
59'32"W 1372.29 FEET TO SW CORNER OF THE SW ¼ OF THE NE ¼;
THENCE N 33 10'25"W 761.13 FEET TO THE SOUTH RIGHT OF WAY LINE OF HIGHWAY AA; THENCE
ALONG A CURVE TO THE LEFT ALONG SAID SOUTH RIGHT OF WAY HAVING A RADIUS OF 632.23
FEET, AN ARC LENGTH OF 90.10 FEET, A CHORD OF 90.03 FEET AND A CHORD BEARING OF N 70
29'49"E TO THE SOUTH LINE OF THE SE ¼ OF THE SE ¼; THENCE S 89 53'38"E 250.51 FEET TO THE SE
CORNER OF THE SE ¼ OF THE SE ¼;
THENCE N 01 42'40"E 176.26 FEET TO THE SOUTH RIGHT OF WAY OF HIGHWAY AA THENCE
ALONG HIGHWAY AA THE NEXT THREE COURSES; N 49 52'06"E 439.32; THENCE ALONG A CURVE
TO THE RIGHT HAVING A RADIUS OF 632.83 AN ARC LENGTH OF 403.60; A CHORD OF 396.73 AND A
CHORD BEARING OF N 67 56'09" E; THENCE N 89 21'01" E 626.73 FEET TO THE POINT OF BEGINNING
CONTAINING 42 ACRES MORE OR LESS SUBJECT TO ANY EASEMENTS, RIGHT OF WAYS AND
RESTRICTIONS OF RECORD.

WEST PROPERTY DESCRIPTION: *Phase 1*
A PART OF SECTION 35, TOWNSHIP 28 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI;
MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHEAST CORNER OF THE SW ¼ OF THE NE ¼ OF SAID SECTION 35,
THENCE S 00 03'47"E 1290.48 FEET TO THE SOUTH LINE OF SAID SW ¼ OF THE NE ¼; THENCE N 89
59'32"W 1372.29 FEET TO THE SW CORNER OF THE SW ¼ OF THE NE ¼ AND THE POINT OF
BEGINNING.
THENCE S 00 59'11"W 1328.70 FEET TO THE SOUTH LINE OF THE NE ¼ OF THE SE ¼; THENCE N 89
17'09"W 1074.84 FEET ALONG SAID SOUTH LINE OF THE NE ¼ OF THE SE ¼ TO THE EAST LINE OF
OWENS ROAD; THENCE N 01 27'07"E ALONG THE EAST LINE OF OWENS ROAD 858.07 FEET; THENCE
LEAVING SAID ROAD S 39 29'43"E 455.23 FEET; THENCE N 00 24'13"E 466.69 FEET TO THE SOUTH
LINE OF THE SE ¼ OF THE NW ¼; THENCE N 89 30'12"W 446.69 FEET TO THE EAST LINE OF OWENS
ROAD; THENCE N 00 24'13"E 619.73 FEET TO THE SOUTH LINE OF HIGHWAY AA; THENCE ALONG
THE SOUTH LINE OF HIGHWAY AA THE NEXT TWO COURSES S 89 52'46"E 604.00 FEET; THENCE
ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 632.23', AN ARC LENGTH OF 39.99' A CHORD
OF 39.99' AND A CHORD BEARING OF N 76 23'31" E; THENCE LEAVING SAID RIGHT OF WAY S 33
10'25"E 761.13 FEET TO THE POINT OF BEGINNING CONTAINING 40.0 ACRES MORE OR LESS
SUBJECT TO ANY EASEMENTS, RIGHT OF WAYS AND RESTRICTIONS OF RECORD.

All as shown on the final plat thereof and/or revisions thereto filed in the Real Estate Records of Christian
County, Missouri.

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